IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 226 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
LAKHANPAL NATIONAL LTD - Respondent(s)

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Appearance :
Mrs. MONA M BHATT for Applicant(s) : 1,
MR MANISH J SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. At the instance of the Revenue, Income-tax Appellate Tribunal, Ahmedabad Bench “C” Ahmedabad has made this Reference for opinion of the High Court on the following question.

   “Whether, on the facts and circumstances of the case, the Tribunal is right in hoping that the amount of Rs. 97,662/- should not have been included for the purpose of disallowance u/s. 37[3A]?”

2. Short facts are that, for the assessment year 1980-81, the assessee claimed deduction for amount of Rs. 97,662/-, submitting inter alia, that this money was used for reimbursing part of the incentive paid to the Sales Representatives of distributors as agreed between the assessee and its distributors. However, the submission did not find favour with the assessing officer and on an appeal being dismissed, the assessee took up the matter to the Tribunal. The Tribunal placing its strong reliance upon the judgment of the Calcutta High Court in the case of CIT Vs. The Statement Ltd., reported in 198 ITR 582 and

CIT Vs.Bata India Ltd., reported in 201 ITR 884, held that the said reimbursement in accordance with the agreement could not be termed to be an amount spent for sales promotion, with this finding, the Tribunal allowed the appeal.

3. Mrs. Bhatt, learned counsel for the Revenue submits that Section 37[3A][i] relates to disallowance in relation to the money spent for advertisement, publicity and sales promotion and as the amount paid to the Sales Representatives was for sales promotion, reimbursement would fall within the mischief of “sales promotion” and as such, was rightly disallowed by the assessing officer. On the other hand, learned counsel for the assessee submitted that there is a marked distinction between the terms “sales” and “sales promotion” and every amount spent for achieving good sales would not fall within the mischief of expenditure for “sales promotion”.

4. Division Bench of this Court, in the matter of **CIT Vs. Zippers India, reported in 284 ITR 142,** placing its reliance upon the judgment in the matter of Bata India Limited [supra] has

observed that there is a marked distinction between the terms “sales” and “sales promotion”. In the said matter, the Court observed that the commission paid for local sales as well as for export sales could not be considered to be sales promotion expenditure for purposes of disallowance considering the fact that the commission was paid for the services rendered.

5. We have heard the parties at length.

6. Identical is the situation here. Incentive paid to the Sales Representatives of the distributors is for the services rendered by them and if that be so, the judgment in the matter of Zippers India Ltd. [supra] would apply with full force. The Tribunal was right and justified in holding against the Revenue. The question is answered against the interest of the Revenue and in favour of the assessee. The Reference stands disposed of. No costs.

[R.S. GARG, J.]

[M.R. SHAH, J.]

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